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No. 958

In the Supreme Court of the United States

OCTOBER TERM, 1960

BANK VOOR HANDEL EN SCHEEPVAART, N.V., ET AL.,
PETITIONERS

v.

ROBERT F. KENNEDY, ATTORNEY GENERAL OF THE UNITED STATES, AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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OPINION BELOW

The District Court wrote no opinion. The opinion of the Court of Appeals (Pet. App. 15–17) is reported at 288 F. 2d 375.

JURISDICTION

The judgment of the Court of Appeals (Pet. App. 19) was entered on February 23, 1961. The petition for a writ of certiorari was filed on May 11, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the District Court properly dismissed, for lack of jurisdiction, a suit brought under Section 9(a) of the Trading with the Enemy Act for the return of property vested during World War II, where it appeared without dispute that petitioners, Netherlands corporations, were resident and doing business within enemy-occupied territory (occupied Holland) when the property was seized.

STATUTE INVOLVED

Pertinent portions of relevant sections of the Trading with the Enemy Act, 40 Stat. 411, as amended, 50 U.S.C. App. 1 *et seq.* (including Sections 2, 7(c), 9(a) and 32) are reprinted in the appendix to the petition (pp. 20–24). We have set forth, in addition (App. A, *infra*, p. 12) the first paragraph of Section 7(c) and a portion of Section 12.

STATEMENT

Since this case turns solely upon the jurisdiction of the District Court to entertain petitioners' suit, the facts may be summarily stated:

Petitioners are Netherlands corporations whose property was vested by the Alien Property Custodian during the German occupation of Holland (Pet. App. 16). The instant suit for return of the seized property was filed in June 1949, pursuant to the provision of Section 9(a) of the Trading with the Enemy Act. The complaint (J.A. 2–8) alleged that petitioners were not "enemies" within the meaning of the statute and were accordingly entitled to a return. The case was held in abeyance, however, pending disposition of an

administrative claim for return of vested property which had been previously filed with the Custodian under Section 32 of the statute (see J.A. 25–28).

The administrative claim was disallowed by a decision of the Custodian [1] entered on February 13, 1959. His decision (reprinted in App. B, *infra*, pp. 13–38), based exclusively on exhibits of undisputed authenticity and a stipulation of facts, found that petitioners were beneficially owned by a Hungarian national residing in Switzerland, Baron Heinrich Thyssen-Bornemisza; that Thyssen-Bornemisza, acting through an agent, was engaged in extensive wartime business operations in Germany; and that petitioners were enemy-tainted because of the enemy character of their owner.

Following completion of the administrative proceedings, the government moved in the District Court to dismiss the pending Section 9 suit on the ground that petitioners were "at all material times corporations incorporated in the Netherlands while the Netherlands were occupied by Germany and Germany was at war with the United States" (J.A. 47–48), and hence were "enemies" within the Act's definition. The District Court granted the motion to dismiss (J.A. 48–51) and the Court of Appeals affirmed *per curiam* (Pet. App. 16–17).

REASONS FOR DENYING THE WRIT

In holding that a remedy under Section 9(a) is not available to petitioners, the lower courts were plainly correct; the statutory language permits no

[1] The term "Custodian" is used to refer both to the Alien Property Custodian and to his successors.

other conclusion. Petitioners' constitutional argument, assuming *arguendo* that it may have merit, leads only to the conclusion that they should seek relief by a suit for just compensation in the Court of Claims—a remedy which they have not pursued. The question presented here, moreover, has no substantial importance at this late stage in the administration of alien property.

1. The statutory remedy conferred by Section 9(a) runs only to one not an "enemy" or "ally of enemy."[2] And "enemy" is defined in Section 2 as including, *inter alia,* (1) persons of any nationality resident "within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war" and (2) corporations organized or doing business "within such territory." Petitioners are "enemies" under this definition. Indeed, even petitioners concede that this is so for purposes of the seizure of their property, but they contend that the meaning of "enemy" under Section 9 should be interpreted as according them a right to recover the property after occupation of the Netherlands had ceased.

The Act's definition, however, makes no distinction between those who are personally hostile and those who are sympathetic to the United States. Nor does it draw distinctions based upon nationality or citizenship.[3] The test is residence or incorporation within

[2] "Enemy" property shall be returned only "as Congress shall direct." Section 12.

[3] Indeed, the belligerent right to take property of those subject to enemy control has never been deemed limited to those who are personally hostile or who are affiliated by citizen-

enemy or enemy-occupied territory, and the property of an American citizen who is resident there is subject to confiscation no less than that of one who is both a national and resident of the territory. Section 2(a), it has been stated, "was intended to have specific application to any individual regardless of his nationality or citizenship and even if a citizen of the United States, if he was a resident within a territory of any nation with which the United States was at war." *United States* v. *Krepper*, 159 F. 2d 958, 966 (C.A. 3), certiorari denied, 330 U.S. 824. See, also, *Feyerabend* v. *McGrath*, 189 F. 2d 694 (C.A.D.C.).

It is significant that Congress had provided (Section 2) a single definition of "enemy" both for purposes of authorizing the Custodian to sequester

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ship or nationality with the enemy country. In *Miller* v. *United States*, 11 Wall. 268, 305–306, this Court stated:

"* * * The confiscation is not because of crime, but because of the relation of the property to the opposing belligerent, a relation in which it has been brought in consequence of its ownership. It is immaterial to it whether the owner be an alien or a friend, or even a citizen or subject of the power that attempts to appropriate the property. In either case the property may be liable to confiscation under the rules of war. It is certainly enough to warrant the exercise of this belligerent right that the owner be a resident of the enemy's country, no matter what his nationality. The whole doctrine of confiscation is built upon the foundation that it is an instrument of coercion, which, by depriving an enemy of property within reach of his power, whether within his territory or without it, impairs his ability to resist the confiscating government, while at the same time it furnishes to that government means for carrying on the war. * * *"

See, also, *The Benito Estenger*, 176 U.S. 568; *The Venus*, 8 Cranch 253; *Juragua Iron Co.* v. *United States*, 212 U.S. 297; *Society for the Propagation of the Gospel* v. *Wheeler*, Fed. Cas. No. 13,156.

property (section 7(c)) and for purposes of authorizing a suit for its return (section 9(a)).[4] This Court, moreover, has already rejected as an "impossible construction" the suggestion that enemy status might change as a result of the termination of war, stating that "The word 'enemy' * * * of course refers to the person who or corporation which fulfilled the definition of enemy during the war." *Swiss Insurance Co. v. Miller,* 267 U.S. 42, 45 (involving a Swiss corporation which did business with Germany prior to the seizure of its property and contended that it ceased to be an enemy when it thereupon terminated the conduct of such business or, alternatively, when the war ended). See, also, *Farmers' Loan & Trust Co.* v. *Hicks,* 9 F. 2d 848 (C.A. 2), certiorari denied, 269 U.S. 583. The same reasoning compels the rejection of petitioners' shifting construction.

Faced with unambiguous statutory provisions and a settled line of decisions applying these provisions in accordance with their plain term petitioners rely upon a constitutional objection. In substance, they contend that, although their property was subject to seizure for "protective" purposes, their connection with the enemy was forcibly imposed and, therefore, it would be unconstitutional for the United States to retain their property now that the threat of its utilization by the enemy is past. In other words, it is argued that those who are "technical enemies" (persons whose

[4] Sections 2, 7(c) and 9(a) were enacted as part of the original 1917 Act. The vesting power was expanded during World War II, but the right to sue for return was still barred to those who were Section 2 "enemies." See *Clark* v. *Uebersee Finanz-Korporation,* 332 U.S. 480.

only affiliation with the enemy is that they were incorporated within territory subsequently occupied by the enemy), rather than "real" enemies, have a constitutional right to the return of seized property or to just compensation for its loss. This right, petitioners contend, cannot be satisfied by a purely administrative remedy.[5]

Even if the administrative remedy which Congress has provided in Section 32 is constitutionally inadequate, the literal language of Section 9(a)—which bars "enemies" as defined in Section 2—cannot be judicially modified to permit suit by "technical enemies." This seems particularly clear when it is considered that Congress, in enacting Section 32 in 1946, explicitly recognized that the Trading with the Enemy Act denied "technical enemies" the right to file suit. As the relevant committee report stated (H. Rep. 1269, 79th Cong., 1st Sess., pp. 1–2), the new legislation authorizing administrative return to those who were merely "technical enemies" was adopted because "present law does not permit a return of the property of even these technical 'enemies'." And see *Guessefeldt*

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[5] Petitioners, we note, make no effort to demonstrate that the detailed administrative determination made in their case lacks rational basis. They attach significance to the fact that property seized by Great Britain was returned to the same Netherlands corporation. See *Bank voor Handel en Scheepvaart N.V.* v. *Slatford and Another*, 1 Q.B. 248, 252 (1953). But this decision rests on the proposition that under English law the courts will not pierce the corporate veil in order to ascertain whether the beneficial owners are enemies. *Ibid; Daimler Co. Ltd.* v. *Continental Tyre and Rubber Co.*, 2 A.C. 307 (1916). The contrary is, of course, true under American law. *Clark* v. *Uebersee Finanz-Korporation*, 332 U.S. 480.

v. *McGrath*, 342 U.S. 308, 314–315, in which this Court observed, "Section 32 of the Trading with the Enemy Act * * * as * * * enacted after World War II, provided for administrative returns of property to certain classes of 'technical' enemies who were ineligible to bring suit under Section 9(a)." See, also, *McGrath* v. *Zander*, 177 F. 2d 649, 652 (C.A.D.C.). The statutory bar cannot possibly be characterized as inadvertent.

If, therefore, the statutory remedies, as applied to "technical enemies," are constitutionally inadequate, the conclusion to which one is forced is not that Section 9(a) may be rewritten so as to provide that which it in terms denies, but, rather, that petitioners are required to proceed in the Court of Claims by way of a suit for just compensation rested on the Fifth Amendment. See *Cities Service Co.* v. *McGrath*, 342 U.S. 330, 335; *Silesian-American Corp.* v. *Clark*, 332 U.S. 469, 479–480; *Russian Volunteer Fleet* v. *United States*, 282 U.S. 481.[6] This they have not done.[7]

2. Petitioners' position is not aided by reference to the 1957 Treaty of Friendship, Commerce and Navigation between the United States and the Netherlands,

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[6] If petitioners are correct in their view that a judicial remedy is constitutionally compelled, the "sole relief and remedy" language of Section 7(c) of the Trading with the Enemy Act does not bar the availability of judicial relief grounded upon the Fifth Amendment.

[7] We are not unmindful that petitioners may now be barred from proceeding in the Court of Claims by limitations. See *Soriano* v. *United States*, 352 U.S. 270. But the failure to pursue this avenue is one with which petitioners alone are chargeable, especially since it has long been settled that Section 9(a) is unavailable to one who falls within the Section 2 definition of "enemy."

8 U.S.T. 2043. The Court of Appeals observed (Pet. App. 17) that this treaty "assures Netherlands nationals full access to United States courts but does not waive sovereign immunity, mention the Trading With the Enemy Act, or create causes of action which Congress has refused to create."[8] Certainly, the concept of "access to the courts" in Article V of the Treaty (Pet. App. 24) does not create substantive rights for which the law of the forum makes no provision.[9] *Cf. Maiorano* v. *Baltimore & Ohio R.R. Co.*, 213 U.S. 268, 274. Moreover, petitioners are in no position to assert that they lack a "just compensation" remedy within Article VI (Pet. App. 24) when they have failed to pursue that remedy in the Court of Claims.

3. The issue raised by petitioners may fairly be described as residual; at this late date, it has no substantial importance in the administration of alien property. It is significant in this connection that the instant decision is one of first impression although the World War II vesting program is now twenty years old.

More than 18,000 so-called title claims (*i.e.*, claims for the return of vested property made by persons asserting ownership interests) were filed administratively in the aftermath of World War II. The Custodian has made final disposition of all except

[8] It might have added that there is no indication that the treaty was to have retroactive effect or to apply in any way to measures taken by the signatories during World War II.

[9] The protocol to Article V reads as follows (8 U.S.T. 2043, 2086):

"The term 'access' as used in Article V, paragraph 1, comprehends, among other things, legal aid, costfree access to the courts and exemption from security for costs."

approximately 700 of these claims. We note parenthetically that the administrative program conducted under Section 32 has resulted in the allowance of many hundreds of claims filed by the residents of enemy-occupied territory and that it has operated, with very rare exception, to the mutual satisfaction of this government and of the other governments jointly interested in the disposition of the external assets of Germany.[10]

Of the approximately 700 matters still pending administratively, most involve so-called "persecutee" claims filed by persons who were resident within enemy, as distinguished from enemy-occupied, territory.[11] As to the character of these claims, see *Schil-*

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[10] See the Brussels Agreement Relating to the Resolution of Conflicting Claims to German Enemy Assets, 2 U.S.T. 731, and the Memorandum of Understanding between the United States and The Netherlands, 2 U.S.T. 1262.

[11] The figures given in this and in the preceding paragraph as to administrative claims do not take into account claims filed with the Custodian by individual shareholders who have intervened, under the doctrine of *Kaufman* v. *Societe Internationale, etc.*, 343 U.S. 156, in the so-called Interhandel or I.G. Chemie litigation. See, also, *Societe Internationale, etc.* v. *Rogers*, 357 U.S. 197. That case, both in its administrative and in its litigation aspects, has been administered separately from the balance of the alien property program. Doubtless, some of the individual shareholders of Interhandel may fall within the "technical enemy" category and if Interhandel, the corporate plaintiff, should ultimately be found to be enemy-tainted by virtue of affiliation with I.G. Farben of Germany, various questions might arise as to the eligibility of some of Interhandel's shareholders. We do not believe, however, that the bare possibility that the issue raised in the present petition might arise in the Interhandel litigation detracts from the conclusion, stated above, that the instant case lacks sufficient importance to warrant review by the Court at this time.

ling v. *Rogers*, 363 U.S. 666. More significant is the fact that among those whose claims are pending administratively only a handful have filed suits under Section 9(a). And, in view of the statute of limitations, only a small number would be in a position to do so now should their administrative claims be disallowed.[12]

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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JUNE 1961.

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[12] The applicable limitations provision is Section 33 of the Trading with the Enemy Act, 50 U.S.C. App. 33.

APPENDIX A

Trading with the Enemy Act, 40 Stat. 411, as amended, 50 U.S.C. App. 1 *et seq.*:

Section 7(c):

If the President shall so require any money or other property including (but not thereby limiting the generality of the above) patents, copyrights, applications therefor, and rights to apply for the same, trade marks, choses in action, and rights and claims of every character and description owing or belonging to or held for, by, on acount of, or on behalf of, or for the benefit of, an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or the same may be seized by the Alien Property Custodian; and all property thus acquired shall be held, administered and disposed of as elsewhere provided in this Act.

* * * * *

Section 12:

* * * * *

After the end of the war any claim of any enemy or of an ally of enemy to any money or other property received and held by the alien property custodian or deposited in the United States Treasury, shall be settled as Congress shall direct * * *.

APPENDIX B

UNITED STATES OF AMERICA
DEPARTMENT OF JUSTICE
OFFICE OF ALIEN PROPERTY
WASHINGTON, D.C.

In the Matters of:

Docket No. 56 T 128

BANK VOOR HANDEL EN SCHEEPVART N. V.
Title Claim No. 37567

Docket No. 56 T 129

N. V. HANDELSCOMPAGNIE "RUILVERKEER"
Title Claim No. 37568

Docket No. 56 T 130

N. V. HANDELS-EN TRANSPORT-MAATSCHAPPIJ.
"VULCAAN"
Title Claim. No. 37569

Docket No. 56 T. 131

N. V. HOLLANDSCH-AMERIKAANSCHE BELEGGINGS-MAATSCHAPPY (Holland-American Investment Corp.)
Title Claim No. 42467

Docket No. 56 T 132

HANDELSVENNOOTSCHAP "NORMA" N. V.
Title Claim No. 42468

Docket No. 56 T 133

FAMILIENSTIFTUNG KASZONY
Title Claim No. 43080

Decision of Director

The claimants have filed exceptions to the Hearing Examiner's recommended decision disallowing these claims which are filed under section 32 of the Trading with the Enemy Act, as amended (50 U.S.C. App. 32), for the return of property vested by Vesting Order Nos. 248 (7 F.R. 9097, November 7, 1942); 259 (7 F.R. 10626, December 19, 1942); 261 (7 F.R. 10627, December 19, 1942); 512 (8 F.R. 1154, January 26, 1943); 5905 (11 F.R. 2097, February 28, 1946); 8471 (12 F.R. 2151, April 1, 1947, as amended: 12 F.R. 3898, June 14, 1947); 8589 (12 F.R. 2318, April 8, 1947; and 9201 (12 F.R. 4130, June 25, 1947). The recommended decision is based upon a record consisting exclusively of exhibits and a stipulation of facts.

FINDINGS OF FACT

Upon consideration of the record before the Hearing Examiner, I find that the basic facts material to a disposition of these claims are:

1. Claimants, Bank voor Handel en Scheepvart N.V. (hereinafter Bank voor Handel), N.V. Handelscompagnie "Ruilverkeer" (hereinafter Ruilverkeer), N.V. Handels-en Transport-Maatschappij "Vulcaan" (hereinafter Vulcaan) and N.V. Hollandsch-Amerikaansche Beleggings-Maatschappy or Holland-American Investment Corp. (hereinafter HAIC) are corporations organized and existing under the laws of the Kingdom of the Netherlands, and until its liquidation on July 25, 1949 claimant Handelsvennootschap "Norma" N.V. (hereinafter Norma) was a corporation organized and existing under the laws of the Kingdom of the Netherlands.

2. Claimant Familienstiftung Kaszony (hereinafter Kaszony) is a family foundation organized and existing under the laws of Switzerland.

3. The stock ownership of each claimant throughout World War II was as follows:

Heinrich Thyssen-Bornemisza, Sr. (hereinafter H.T.B. Sr.), who died in Switzerland on June 26, 1947, was the sole owner of Kaszony. Kaszony in turn owned all of the outstanding shares of HAIC.

HAIC owned all of the outstanding shares of N.V. Technische Handelsvereeniging "Dunamis" (hereinafter Dunamis), a corporation organized and existing under the laws of the Netherlands.

HAIC also owned 62½% of the outstanding shares of Norma, and Dunamis owned the remaining 37½% thereof.

Kaszony owned 52% of the outstanding shares of Algemeene Exporthandel, N.V. (hereinafter Exporthandel), and Norma owned the remaining 48% thereof. Exporthandel was a corporation organized and existing under the laws of the Netherlands.

Exporthandel owned 50% of the outstanding ordinary shares of Bank voor Handel, Norma owned 24% thereof, Kaszony owned 7¼% thereof and H.T.B. Sr. individually owned the remaining 18¾%.

Bank voor Handel owned 89% of the outstanding shares of "Vulcaan", and "Norma" owned 4.4% thereof. The remaining 6.6% were owned by H.T.B. Sr. individually.

Bank voor Handel owned all of the outstanding shares of Ruilverkeer.

4. With the exception of Kaszony, each of the claimant corporations was controlled and more than 50% of the stock of each was owned by corporations organized and existing under the laws of the Netherlands and Switzerland. The indirect ownership and

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control in fact of these claimants and the legal and beneficial ownership and control of Kaszony, the only Swiss claimant, were in H.T.B. Sr. until his death.

5. The claimant corporations constitute only a few of the many enterprises and companies comprising the entire Thyssen-Bornemisza group. Over the years, the various activities and enterprises of the group developed and expanded into virtually a world-wide integrated organization. By virtue of his ownership of Kaszony, H.T.B. Sr. owned and controlled the claimant organizations and through them owned and controlled a substantial number of corporations in Holland, Germany, United States, Belgium, England, and Brazil. The extent and scope of the international business activities of the Thyssen-Bornemisza group of companies can be seen from the following summary:

(a) *Bank voor Handel en Scheepvaart N.V.* (Holland)
Capital: 12,000,000 guilders
Engaged in general banking and trading business.

(b) *N.V. Handels en Transport Maatschappij "Vulcaan"* (Holland)
Capital: 5,000,000 guilders
General trading company dealing mainly in iron ores, coal, ship brokerage, and fertilizers. One of the leading companies in its field in Holland.

(c) *Handelscompagnie "Ruilverkeer" N.V.* (Holland)
Capital: 3,840,000 guilders
Non-operating holding company.

(d) *Holland-American Investment Corporation* (Holland)
Capital: 1,000,000 guilders
Investment company which acted as depositary of securities, gold, etc.

(e) *Handelsvennoopschap "Norma" N.V.* (Holland)

Capital: 50,000 guilders
Trading company (inactive since 1930).

(f) *N.V. Vulcaan's Rijnreederij* (Holland)
Capital: 50,000 guilders.
Wholly-owned subsidiary of claimant "Vulcaan".

(g) *N.V. Havenbedrijf Vlaardingen-Oost* (Holland)
Capital: 1,000,000 guilders
Owned by:
Bank voor Handel—250,000 guilders (25%)
Vulcan—750,000 guilders (75%)
Owned and operated a port and a stevedoring and ship repair business near Rotterdam. The quay, cranes and loading bridges of this company were destroyed by the Germans during the occupation of Holland.

(h) *Halcyon Lijn N.V.* (Holland)
Capital: 1,000,000 guilders
All owned by claimant Bank voor Handel.
Owns and operates fleet of ocean-going tramp steamships. At the outbreak of war in September 1939, the 12 vessels owned by Halcyon Lijn, N.V., totalling 107,000 tons, were placed at the disposal of the Netherlands government, and when Holland was occupied by Germany in 1940, ten of these vessels, which were then at sea, put into British ports under orders previously given by the Netherlands government. These ten vessels subsequently served under orders of the British Ministry of Shipping and six of them were sunk during the war.

(i) *N.V. Algemeene Brandstoffen Maatschappij Rotterdam* (Holland)
Capital 50,000 guilders
All owned by claimant Vulcaan.

(j) *N.V. Maatschappij tot Exploitatie van Onroerende Goederen "De Blaak"* (Holland)
Capital: 40,000 guilders
All owned by claimant Bank voor Handel.
Non-operating holding company.

(k) *Hollandsch Trustkantoor N.V.* (Holland)
Capital: 10,000 guilders
Owned by: Administrative services: administering assets, acting as depositary, etc.

(l) *Rotterdamsch Trustee's Kantoor N.V.* (Holland)
Capital: 100,000 guilders
Owned by claimant Bank voor Handel—50,000 guilders (50%)
Owned by "De Blaak"—50,000 guilders (50%)
Administrative services: Administering assets, acting as depositary, keeping accounting records, etc.

(m) *N.V. "Gerfa" Gereedschappenfabriek* (Holland)
Capital: 300,000 guilders
Owned by claimant Vulcaan.
Manufacturing and trading in machine equipment, and ship repairs.

(n) *N.V. Technische Handelsvereeniging "Dunamis"* (Holland)
Capital: 100,000 guilders
Owned by claimant H.A.I.C.
Trading and development corporation (inactive since 1930).

(o) *Algemeene Exporthandel N.V.* (Holland)
Capital: 25,000 guilders
Owned by:
Kaszony—13,000 guilders (52%)
Norma—12,000 guilders (48%)
Trading corporation (inactive since 1930).

(p) *N.V. Vulcaan Kolen Maatschappij* (Holland)

Capital: 500,000 guilders
Owned by:
Thyssen Bornemisza, Sr.—300,000 guilders
Norma—200,000 guilders

(q) *"Veemex" Maatschappij voor Veembedrijf en Expedite N.V.* (Holland)
Capital: 20,000 guilders
Coal trading company.
Wholly-owned subsidiary of Vulcaan.
Port activities.

(r) *Holland American Trading Corporation* (N.Y.)
Capital: $50,000
Owned by claimant Bank voor Handel.
General trading corporation.

(s) *Seamless Steel Equipment Corporation* (N.Y.)
Capital: $50,000
Owned: 50% by claimant Bank voor Handel.
Sales and distribution of seamless tubes and pipes.

(t) *Union Banking Corporation* (N.Y.)
Capital: $400,000
Owned by claimant "Ruilverkeer".
New York banking corporation.

(u) *Domestic Fuel Corporation* (N.Y.)
Capital: $50,000
Owned:
25% by claimant Vulcaan
25% by Holland American Trading Corporation
Importing and sale of coal in United States and Canada.

(v) *Companhia Thyssen do Brasil S.A.* (Brazil)
Capital: 1,500,000 cruzeiros
Owned:
50% by claimant Bank voor Handel
50% by claimant Vulcaan
Ownership of real estate in Brazil.

(w) *Ghent Coal Company S.A.* (Belgium)
Capital: 300,000 francs
Owned by claimant Vulcaan.
Coal wholesaler in Belgium.

(x) *Vulcaan Commerciale & Maritime S.A.* (Belgium)
Capital: 2,700,000 francs
Owned by claimant Vulcaan.
Coal wholesaler in Belgium.

(y) *Vulcaan (London) Ltd.* (England)
Capital: £5,000
Owned by claimant Vulcaan.
Coal wholesaler in England.

(z) *Vulcaan Bunkering Company S.A.* (Belgium)
Capital: 250,000 francs
Owned by claimant Vulcaan.
Coal sales and bunkering.

(aa) *Rittergut Ruedersdorf G.m.b.H., Hennickendorf* (Germany)
Capital: 600,000 Reichmarks
The entire capital of this corporation was owned by Bank voor Handel (Claimant in 37567). The corporation was engaged in the manufacture of cement and bricks.

(bb) *Press-und Walzwerk A.G.* (Germany)
Capital: 22.760.000 Reichmarks
Of the capital of this corporation 63.11% was owned by Kaszony (Claimant in 43080), 17.575% by Bank voor Handel (Claimant in 37567) and the remaining 19.315% by Rittergut Ruedersdorf G.m.b.H., which, as shown above, was wholly owned by Bank voor Handel. The corporation manufactured iron and steel products. During the war its output was compelled by German authorities to go into the manufacture of submarines, aircraft, ammunition, rolling stock, and was used for needs of the Four-Year Plan.

(cc) *A. G. Oberbilker Stahlwerk* (Germany)
Capital: 1,500,000 Reichmarks
Of the capital of this corporation 99.67% was owned by Press-und-Walzwerk A.G. (above under bb), whereas the remaining .33% was owned by Bank voor Handel. The nature of the business of the corporation was the same as that of Press-und-Walzwerk A.G.

(dd) *Thyssensche Gas-und Wasserwerke G.mb.H.* (Germany)
Capital: 35,000,000 Reichmarks
60% of the capital of this corporation was owned by Kaszony (Claimant in 43080); the remaining 40% was owned by Bank voor Handel (Claimant in 37567). The Corporation was one of the principal gas and water suppliers of the Ruhr area. During the war its annual output amounted to one billion cubic meters of gas and 100 million cubic meters of water. It also produced more than 6,000 tons of sulphur annually, thus taking second place among the sulphur producers of the Ruhr area.

(ee) *Niederrheinische Gas-und Wasserwerk G.m.b.H.* (Germany)
Capital: 700,000 Reichmarks
This corporation, a wholly owned subsidiary of Thyssensche Gas-und Wasserwerke G.m.b.H. (above under (dd), was a local supplier of gas and water.

(ff) *Gewerkschaft Walsum* (Germany)
99% of the capital of this corporation was owned by Thyssensche Gas-und Wasserwerke G.m.b.H. (above under (dd), and the remaining 1% by Niederrheinsche Gas-und Wasserwerke G.m.b.H. (above under (ee)). The corporation operated a coal mine with an annual output of one million tons.

(gg) *Seismos G.m.b.H.* (Germany)
Capital: 128,000 Reichmarks
This corporation was wholly owned by Thyssensche Gas-und Wasserwerke G.m.b.H. (above under (dd)). It was engaged in geophysical research in connection with the development of oil resources in Germany and in the occupied territories. In view of its paramount importance to the German war effort it enjoyed the special privileges granted enterprises of its kind by order of the Chairman of the Council of Ministers for the Defense of the Reich and Commissioner for the Four-Year Plan.

(hh) *Flensburger Schiffsbaugesellschaft* (Germany)
Capital: 2,640,000 Reichmarks
Of the capital of this corporation 31.023% was owned by Bank voor Handel (Claimant in 37567), and 28.545% by Vulcaan (Claimant in 37569); 25% by the City of Flensburg and the remaining 14% by unidentified individual Germans. Before World War II, the Company was engaged in building merchant ships but in 1940 it was compelled by the German authorities to begin the construction of submarines. The Company delivered a substantial number of submarines, at least 28. In 1942 88.7% of the total output of the Company consisted of war production.

(ii) *Deutsch-Niederlaendische Schiffahrts-und Handels, G.m.b.H.* (Germany)
Capital: 100,000 Reichmarks
80% of the capital of this corporation was owned by Vulcaan (Claimant in 37569) and the remaining 20% by Halcyon Lijn N.V. Rotterdam, a wholly owned subsidiary of Bank voor Handel (Claimant in 37567). The corporation

served the Rhine River shipping needs of the combine.

(jj) *August-Thyssen Bank A.G.* (Germany)
Capital: 16,000,000 Reichmarks
Of the capital of this corporation Kaszony (Claimant in 43080) owned 25%, Press-und Walzwerk A.G. (above under (bb) another 55%, and Ruilverkeer (Claimant in 37568) the remaining 20%. The bank was the financing institution of the enterprises constituting H.T.B. Sr.'s German combine.

(kk) *Bremer Vulkan Schiffbau-und Maschinenfabrik* (Germany)
Capital: 10,000,000 Reichmarks
August Thyssen-Bank A.G. (above under (jj) owned 29.6% of the capital of this corporation, another 29.6% was owned by Press-und Walzwerk A.G. (above under (bb)), 25% was owned by Vulcaan (Claimant in 37569) and 2.21% by Bank voor Handel (Claimant in 37567); the ownership of the remaining 13.59% has not been accounted for. This corporation was engaged in ship building, mainly for the merchant marine. During the war, however, it was compelled to build 74 submarines, which it did.

(ll) *Zucht & Rennetrieb Erlenhof, G.m.b.H.* (Germany)
Capital: 850,000 Reichmarks
Of the capital of this corporation 54.706% was owned by Vereinigte Berliner Moertelwerke, a subsidiary of Rittergut Ruedersdorf, G.m.b.H. (above under (aa)), 29.412% was owned directly by H.T.B. Sr. and 15.882% was owned by Hollandsche Trust Kantor, N. V., Rotterdam. This company was engaged in the breeding of race horses, which was one of the principal hobbies of H.T.B. Sr.

6. During the years 1940 to 1947 H.T.B. Sr. was not an officer or director of any of the corporations in Holland.

7. From 1932 on, H.T.B. Sr. held the position of Chairman of the Supervisory Board of Press-und Walzwerk A.G. and of Oberbilker Stahlwerk Duesseldorf, and Deputy Chairman of Bremer Vulkan Schiffbau-und Maschinenfabrik.

8. H.T.B. Sr. personally attended no more than two meetings of the boards of the German corporations prior to 1939. During World War II he attended no meetings of these boards, nor did he personally perform any functions as a member thereof. He was credited with Reichmarks 25,000 for the years 1941, 1942 and 1943, respectively, for compensation as a member of the supervisory board of a German corporation. This sum was remitted to August-Thyssen Bank, Berlin, and credited to H.T.B. Sr.'s blocked account. For the years 1944 to 1947 DM 5,000 were paid on January 31, 1952 to the Community of Heirs for H.T.B. Sr. and remitted to Banking House Trinkhaus, Dusseldorf.

9. Although H.T.B. Sr. was a member of the management of Gewerkschaft Walsum, the business of the company was actually conducted by a special representative of Thyssensche Gas-und Wasserwerke G.m.b.H., which held 99% of the capital stock of Walsum. H.T.B. Sr. received no compensation as a member of the management of this enterprise.

10. In May 1940, when Holland was occupied by the armed forces of Nazi Germany, H.T.B. Sr., residing in Switzerland, was cut off from all communication with the managers of his Netherlands companies.

11. Dr. Wilhelm Roelen, a citizen and resident of Germany, was a Managing Director of Thyssensche

Gas-und Wasserwerke G.m.b.H. (hereinafter Thyssen Gas), one of the larger Germany companies of H.T.B. Sr. As such he was also the special representative of the management of Gewerkschaft Walsum. When Rotterdam was occupied by the German Army and the records of Bank voor Handel were subject to investigation by the German tax and exchange authorities, Roelen became concerned because of the confiscation of the properties of Fritz Thyssen, H.T.B. Sr.'s brother, and because of certain past transactions between Bank voor Handel and Thyssen Gas.

12. Upon his own initiative, Roelen went to Switzerland in July 1940 in an attempt to protect the interests of H.T.B. Sr. wherever he could.

13. On July 9, 1940, H.T.B. Sr. by a general power of attorney appointed Roelen to represent him in every place, including negotiations and transactions with government agencies, and in all respects to act in his behalf.

14. Exercising the powers conferred on him by H.T.B. Sr., the attorney in fact took over the management of H.T.B. Sr.'s enterprises from the Dutch managers, assuming full charge of and responsibility for the management of the Netherlands corporations and the German corporations whose stock was owned by the Netherlands corporations. This change in management resulted in 1942 in the removal of H. J. Kouwenhoven as the senior managing director of Bank voor Handel. He was a Dutch citizen and resident on whom H.T.B. Sr. had theretofore relied, not only for the management of his enterprises in the Netherlands, Germany, and elsewhere, but also for the management of his personal financial affairs.

15. In the period between July 1940 and the end of 1944, the attorney in fact visited H.T.B. Sr. in Switzerland about three times a year to report to him

"the status of his companies in Germany and Holland". On a few occasions he was accompanied by Heinrich Lubke, managing director of August-Thyssen Bank, Berlin.

16. H.T.B. Sr. was born in Muelheim-ruhr, Germany, on October 31, 1875. At the age of approximately 25 he left Germany and went to England, where he remained until 1906 when he married Margit Bornemisza, a national of Hungary. Towards the end of 1906 he moved to Hungary and was adopted by his father-in-law, the Hungarian citizen Gabriel Bornemisza. Pursuant to H.B.T. Sr.'s application and in conformity with Article L [50] of the Law of 1879, he was accepted as a citizen of Hungary and took the oath of Hungarian citizenship on December 9, 1906. He retained Hungarian citizenship until his death in June 1947 and was in possession of Hungarian passport No. 438/206 142 (last extended by the Hungarian Legation in Berne, January 18, 1947) on May 31, 1947. Although he acquired Hungarian citizenship in 1906, the German Passport Office in Vienna issued to H.T.B. Sr. German Passport No. 2136, dated April 17, 1919, which was valid for only three months. A letter signed by Davidsen by order of the Foreign Minister of the Reich dated Berlin. 21 October 1942, states that German passport No. 262623 issued to the Baron "at the Hague and prolonged until 5-2-26."

17. Between 1906 and 1919 H.T.B. Sr. lived in Hungary supervising the management of a farm which his father had given him.

18. In 1919 when he was 44 years old the Communist uprisings in the area of Hungary where his farm was located posed threats to the safety of himself and family and resulted in his removal to the Netherlands where he became associated for the first

time with the Thyssen enterprises. He resided in the Netherlands until 1932.

19. Between the autumn of 1919 and the summer of 1921 August Thyssen, Sr., transferred to his two sons, H.T.B. Sr. and Fritz Thyssen, all of his 75% interest in the various Thyssen enterprises. The remaining 25% was then owned by Hans Thyssen and Julius Thyssen, who were cousins of H.T.B. Sr. and his brother.

20. With the ownership of the Thyssen industries in the hands of the sons of the original found[er], the prior pattern of joint ownership and control of the various enterprises as a unit began to dissolve. At first the two brothers informally divided the supervision over their various companies between themselves. Eventually, negotiations were undertaken which led to the division of ownership in the jointly owned properties, so that H.T.B. Sr. became the owner of certain of the enterprises outright, rather than the owner of an undivided interest in all the enterprises.

21. The negotiations for a division of the various properties received from August Thyssen, Sr. extended over a period of almost thirteen years, from 1923 to 1936. In broad terms, the result of the division painstakingly worked out, was that Fritz, Hans and Julius Thyssen became the joint outright owners of certain of the enterprises located in Germany and consisting primarily of steel works, coal mines and cokeries, and H.T.B. Sr. became the sole owner of a group of Netherlands corporations consisting of the Bank voor Handel, a coal and iron ore transportation and trading company, port facilities at Rotterdam and an ocean-going steamship company. These Netherlands companies owned a large proportion of the shares of stock of several German corporations, the

remaining shares of which were acquired outright by H.T.B. Sr. He thus also became the sole ultimate owner and person in control of a number of German non-steel-producing companies which consisted of utilities, coal concessions, ship-building facilities, a seamless tube factory and cement works. The only assets in which a common ownership by Fritz Thyssen and H.T.B. Sr. remained after 1936 were the August Thyssen-Bank in Berlin and a number of undeveloped coal concessions.

22. From the very beginning of his association with his father's business in 1919, H.T.B. Sr. relied upon the extremely well qualified executives in his employ for the management of his enterprices. Chief among these trusted and confidential employees in Rotterdam was Mr. H. J. Kouwenhoven, the senior managing director of Bank voor Handel, who represented H.T.B. Sr. in the initial negotiations on the division of the properties of August Thyssen, Sr.

23. While H.T.B. Sr. resided in The Hague, the amount of time he devoted to the affairs of the various companies was slight and his interest in other pursuits increased. It was during his residence in the Netherlands that H.T.B. Sr. became interested in social activities, extensive traveling, the breeding and racing of thoroughbred horses, and the acquiring of objects of art, his collection of which, at the time of his death, was one of the world's most outstanding.

24. In 1932 H.T.B. Sr. divorced his first wife and married a woman considerably younger than himself. During the same year he purchased a substantial home in Castagnola-Lugano, Switzerland, where he and his new spouse settled to live. From 1901 until his death in 1947 H.T.B. Sr. never resided in Germany.

25. H.T.B. Sr. did not reside within the territory of Germany, Japan, Bulgaria, Hungary or Rumania

at any time subsequent to December 7, 1941. From April 1932 until his death on June 26, 1947 he resided at Castagnola-Lugano, Switzerland.

26. Between December 7, 1941 and March 8, 1946 H.T.B. Sr. was never present in the territory of Germany, Japan, Bulgaria, Hungary or Rumania, or in any territory occupied by the military or naval forces thereof.

27. When the war commenced in 1939 H.T.B. Sr. was 64 years of age. In the same year he was diagnosed as a diabetic. During that year marital difficulties with his third wife resulted in his living apart from her.

28. Because of H.T.B. Sr.'s refusal to follow medical advice and the persistent and excessive use of alcoholic beverages, his diabetic condition grew worse. Following the year 1939 he was seriously affected with arteriosclerosis and his physical and mental condition deteriorated. His health continually worsened following two diabetic comas or apopletic strokes in 1943 and he required almost constant medical care thereafter. By 1946 he was in a state of mental and physical exhaustion which continued without improvement until the time of his death in 1947.

29. Following the liberation of Holland from occupation by the Nazis, temporary administrators were appointed by the Netherlands Government to manage the Netherlands corporations of H.T.B. Sr. pending investigations of their conduct and ownership. These supervisory administrators were subsequently removed after the investigations were made, and no penalties, seizures or censure were imposed on the corporations.

30. Following the death of H.T.B. Sr on June 26, 1947, the assets of his estate were divided among his four children in the following proportions:

Hans Heinrich Thyssen-Bornemisza, Jr.	5/8
Stephan Thyssen-Bornemisza	1/8
Margit Thyssen-Bornemisza Batthyany	1/8
Gabrielle Thyssen-Bornemisza Bentinck	1/8

This was pursuant to a general settlement of the estate entered into by the four children and the widow of H.T.B. Sr. and confirmed by an Arbitration Tribunal under Swiss law.

31. After the death of H.T.B. Sr. the majority stock ownership and control of Bank voor Handel and Kaszony passed to his principal heir, Hans Heinrich Thyssen-Bornemisza, Jr.

32. Thyssen-Bornemisza, Jr. was born in The Hague, the Netherlands on April 13, 1921 and was born a Hungarian national by virtue of the Hungarian citizenship of his parents at that time.

33. Thyssen-Bornemisza, Jr. resided in The Hague from his birth until November 1939, when his parents brought him to Switzerland. He has been residing in Switzerland since that date.

34. Between 1940 and 1944 he attended Fribourg University in Switzerland. In 1944 he took up residence with his father at Castagnola-Lugano and he has resided there ever since.

35. In May 1942, when Thyssen-Bornemisza, Jr. was still a student at Fribourg University and was 21 years old, at the insistence of Dr. Roelen he visited his family's ancestral estate at Schloss-Landsberg in Germany to attend commemoration ceremonies marking the 100th anniversary of the birth of his grandfather, August Thyssen, Sr., who was buried at Schloss-Landsberg.

36. The visit of Thyssen-Bornemisza, Jr. to Germany lasted only five days and after attending the commemorative exercises he visited his father's stable and stud farm located near Frankfurt. His sister,

Margit Thyssen-Bornemisza Batthyany, who was an Austrian national residing in Austria, also attended the ceremonies and visited the stables.

37. During the period from December 7, 1941, to March 8, 1946, Thyssen-Bornemisza, Jr., did not engage in any business within the territory of Germany, Japan, Hungary, Bulgaria or Rumania or within any territory occupied by the military or naval forces thereof, and the only time he was present in such territory during that period was during the five days in May 1942, mentioned above.

OPINION AND CONCLUSIONS

The parties have stipulated that the sole issues material to the determination of this claim are whether the claimants are ineligible under various provisions of section 32 of the Trading with the Enemy Act, as amended (50 U.S.C. App. 32). Claimants do not contend in this proceeding that they are eligible under section 9. The primary issue presented by the parties is whether claimants are ineligible by virtue of subdivision (E) of subsection 32(a)(2). Under that subdivision

> a foreign corporation or association which at any time after December 7, 1941, was controlled or 50 percentum or more of the stock of which was owned by any person or persons ineligible to receive a return under subdivisions (A), (B), (C), or (D) [of section 32(a)(2)],

is ineligible. Under subdivision (D) an individual who was at any time after December 7, 1941, a citizen or subject of Germany, Japan, Bulgaria, Hungary, or Rumania, is ineligible for return if at any time after December 7, 1941, and prior to March 8, 1946, he was

> present * * * in the territory of such nation or in any territory occupied by the military

or naval forces thereof or engaged in any business in any such territory.

It is contended by the claimant corporations that, with the exception of Kaszony, each of them was controlled and all of its stock was owned by corporations organized under the laws of The Netherlands or Switzerland; that none of these claimants is ineligible under subdivision (A), (B), (C), or (D) of section 32(a)(2); and the provisions of subdivision (E) of section 32(a)(2) do not render any of the claimants ineligible for the return of the claimed property since subdivision (E) does not permit inquiry into the question whether the corporations owning or controlling the claimants were themselves owned or controlled by a person ineligible under subdivision (A), (B), (C), or (D). In support of this proposition, claimants cite my decision in *Matter of International Telephone and Telegraph Corporation*, Cl. Nos. 6211 and 6212, January 18, 1955. That matter was decided under the first proviso of subdivision (B) of section 32(a)(2) which authorizes return to the American stockholders of any enemy corporation whose property was vested if such American stockholders owned 100 percent of the stock of the enemy corporation. I ruled that ownership by American nationals of all of the stock of a German corporation which in turn owned all of the stock of a second German corporation whose property was vested did not bring the American nationals within the terms of the first proviso of subdivision (B). But that decision is not applicable to the issue raised by the claimants herein. The phrasing of subdivision (E), "controlled by or 50 per centum or more of the stock of which was owned by", is in the disjunctive. It is clear that subdivision (E) is not concerned with ownership alone as is (B); it also includes the test of actual control.

It is significant that in litigation arising under the Trading with the Enemy Act, as amended, the courts have ruled that the neutral nationality of a corporate claimant is not necessarily conclusive of that claimant's alleged non-enemy status. It has been held that the true character of the interests composing the corporation may be investigated, *Societe Internationale Pour Participations Industrilles et Commerciales, S.A.* v. *McGranery,* 111 F. Supp. 435 (D.C. Dist. of Col., 1953), modified on other grounds, 225 F. 2d 532, cert. den. 350 U.S. 937, and that return will be denied if the corporation is enemy-controlled *Clarke* v. *Uebersee Finanz-Korp.,* 332 U.S. 480 (1947); *Uebersee Finanz-Korporation, A.G.* v. *McGrath,* 343 U.S. 205 (1952); *Swiss International Insurance Co.* v. *Crowley,* 136 F. 2d 265 (C.A., D.C., 1943). In other contexts, it has been decided that the owner of the majority of the stock of one corporation has control of another corporation in which the first corporation has a majority stock interest. *United States* v. *Marshall Transport Co.,* 322 U.S. 31 (1944); *Universal Carloading & Distributing Co.* v. *Railroad Retirement Board,* 71 F. Supp. 369 (D.C., Dist. of Col., 1947); *Madison Pictures* v. *Chesapeake Industries,* 147 N.Y. S. 2d 50 (N.Y. Sup. Ct., 1955). Similarly, the term "controlled", as used in subdivision (E), is not to be limited in its scope to the controls derived solely from direct stock ownership. Neither the language nor the legislative history of the subdivision suggests such a limitation.

In all, I find no basis for concluding that subdivision (E) was intended to prevent the return of vested property to a foreign corporation or association only when it was directly controlled by a person ineligible under subdivision (A), (B), (C), or (D) and to require a return where control by such person was indirect.

H.T.B. Sr.

I now turn to the question of the actual control of claimants within the meaning of subdivision (E). H.T.B. Sr. was the direct owner of all the stock of the claimant Kaszony and the indirect owner of all of the stock of the other claimants. He actually exercised complete dominion over all of the claimants in 1940 by granting to Roelen, a German citizen, his power of attorney, pursuant to which Roelen undertook active management of all the Netherlands claimants and all the German companies owned by these Neterlands claimants. Rolen removed the senior managing director of claimant Bank voor Handel, H. J. Kouwenhoven, a citizen and resident of The Netherlands, on whom H.T.B. Sr. had theretofore relied for the management of his enterprises in The Netherlands, Germany and elsewhere, and who had also managed his personal affairs. H.T.B. Sr. was fully informed of Roelen's actions and did not interfere in any way. The control thus exercised over the Netherlands claimants Roelen pursuant to his power of attorney is attributed to his principal, H.T.B. Sr., *Uebersee Finanz-Korporation, A.G.* v. *Brownell,* 133 F. Supp. 615, 620 (D.C., Dist of Col., 1955), affd. 244 F. 2d 789, cert. den. 355 U.S. 878, and hence the latter not only had the power to control but, through his agent, actually exercised control. It might be noted in passing that a contrary view would avail the claimants nothing under subdivision (E) since it would require the conclusion that they were controlled by Roelen, a citizen and resident of Germany who is clearly ineligible under subdivision (D).

Inasmuch as all of the stock of the claimant Kaszony was owned by H.T.B. Sr. and all of the other claimants were "controlled" by him, each of the claimants is ineligible under subdivision (E) if

H.T.B. Sr. failed to meet the eligibility requirements of subdivision (D). Since he was an Hungarian citizen who was not at any time between December 7, 1941, and March 8, 1946, present in the territory of an enemy nation or in territory occupied by an enemy nation, the test of his eligibility under subdivision (D) is whether he was engaged in business in any such territory during the prescribed period.

Claimants urge that H.T.B. Sr. was nothing more than the ultimate owner of the various corporations which comprised his industrial network and that this ownership did not constitute doing business. The argument is also made that the power of attorney granted by H.T.B. Sr. to Roelen could be used only to exercise the rights of H.T.B. Sr. as stockholder, since that was the latter's only relationship with these corporations. Roelen, it is contended, did not engage in any personal business activities of H.T.B. Sr. and did nothing more than protect the latter's interests as stockholder in these corporations. The change in management effected by Roelen is said to be of no legal significance because the managing directors did not derive their authority from H.T.B. Sr. or Roelen, but rather from the offices which they held.

These arguments are at variance with the stipulated facts that in the exercise of the powers conferred upon him by H.T.B. Sr., Roelen took over the management of and assumed "full charge of and responsibility for" the German and Netherlands enterprises. In an affidavit of May 16, 1950, Roelen stated that "with this power of attorney in my possession I returned to Germany from Holland and proceeded to manage and operate the enterprises of Thyssen-Bornemisza and continued to do so until the end of the war." In an affidavit dated June 5, 1950, Roelen stated that in dismissing Kouwenhoven as a member of the Board of

Directors and as a member of the Supervisory Board of a number of H.T.B. Sr.'s Dutch corporations, he "had no alternative but to use [his] position as general attorney-in-fact" of H.T.B. Sr. Furthermore, that H.T.B. Sr. was fully aware of Roelen's activities and presumably approved them is shown by the fact that Roelen visited H.T.B. two or three times a year to report to him the status of the German and Dutch corporations.

It is thus clear that Roelen regarded H.T.B. Sr., as his source of authority, that it was the power of attorney from H.T.B. Sr. which enabled him to manage the affairs of the corporations in Germany and Holland and that he felt himself accountable to H.T.B. Sr. for his activities. Even if, as contended by claimants, it was his purpose, as well as that of H.T.B. Sr. to preserve the property interests of the latter in Germany and Holland, Roelen's activities unquestionably constituted doing business in Germany and in enemy-occupied Holland. And, since Roelen undertook these acts pursuant to the power of attorney from H.T.B. Sr. and for his benefit, the conclusion is inescapable that H.T.B. Sr., himself, through his authorized agent, was engaged in business in these countries. See *Uebersee Finanz Korporation, A. G.* v. *Brownell, supra.* Although that case was a suit for return under section 9 of the Act and the issue was whether the plaintiff was "doing business" in enemy territory within the meaning of section 2, I perceive no difference between the "doing business" in enemy territory referred to in section 2 and the "engaged in any business" in enemy territory referred to in section 32(a)(2)(D).

It follows that H.T.B. Sr. was ineligible under subdivision (D) of section 32(a)(2) of the Act, and since he owned all of the stock of Kaszony and con-

trolled the other claimant corporations, each of the claimants is ineligible for return under subdivision (E).

Hungarian Peace Treaty

An additional issue raised by claimants relate to the effect of the 1947 Treaty of Peace with Hungary. They contend that the rights of H.T.B. Sr. and H.T.B. Jr., both of them citizens of Hungary, must be considered in the light of Article 29 of that Treaty, the pertinent portion of which is as follows:

> 1. Each of the Allied and Associated Powers shall have the right to seize, retain, liquidate or take any other action with respect to all property, rights and interests which at the coming into force of the present Treaty are within its territory and belong to Hungary or to Hungarian nationals, and to apply such property or the proceeds thereof to such purposes as it may desire, within the limits of its claims and those of its nationals against Hungary or Hungarian nationals, including debts, other than claims fully satisfied under other Articles of the present Treaty. All Hungarian property, or the proceeds thereof, in excess of the amount of such claims, shall be returned.
>
> 2. The liquidation and disposition of Hungarian property shall be carried out in accordance with the law of the Allied or Associated Power concerned. The Hungarian owner shall have no rights with respect to such property except those which may be given him by that law.
>
> 3. The Hungarian Government undertakes to compensate Hungarian nationals whose property is taken under this Article and not returned to them.

Claimants assert that under this language the United States may retain only vested property which had been owned or belonged to Hungarian nationals: that

H.T.B. Sr. and H.T.B. Jr. merely owned interests in each of the claimants, and were not the prevesting owners of the property sought therein; and that since the terms of Article 29 permit the retention only of properties "belonging" to Hungarian nationals (and not to Swiss and Dutch nationals), it follows that the properties claimed herein must be returned.

There is no doubt that Article 29 deals exclusively with Hungarian property. However, to argue that for this reason the Treaty requires the return of non-Hungarian property is a non-sequitur. It is significant that the property which the claimants seek to recover was vested pursuant to the Trading with the Enemy Act, as amended, and that the second sentence of section 2 of Article 29 recognizes that even the rights of Hungary and its nationals to recover vested property are governed by that Act.

In view of the foregoing it is not necessary to decide the additional issues stipulated by the parties which relate to the eligibility or ineligibility of H.T.B. Jr.

Accordingly, Title Claims Nos. 37567, 37568, 37569, 42467, 42468, and 43080 are disallowed.

(Signed) Dallas S. Townsend,
DALLAS S. TOWNSEND,
Assistant Attorney General,
Director, Office of Alien Property.

FEBRUARY 13, 1959.